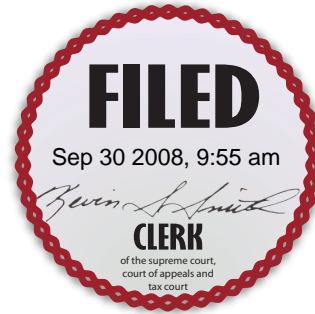


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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ANTONIO CARNEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0802-CR-138
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Steven Eichholtz, Judge  
Cause No. 49G23-0610-FA-195244

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**September 30, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Antonio Carney was convicted of possession of cocaine<sup>1</sup> as a Class A felony and resisting law enforcement<sup>2</sup> as a Class A misdemeanor after a jury trial and was sentenced to a thirty-year aggregate sentence. He appeals raising the following restated issue: whether sufficient evidence was presented to support his conviction for possession of cocaine.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On October 31, 2005 at approximately 9:30 a.m., Indianapolis Police Department Officer Jonathon Baker (“Officer Baker”) was assigned to the area of the 800 block of Udell Street with the Bicycle Unit. While Officer Baker was patrolling the area on his bicycle, he stopped in an alley to observe the activity of Carney and two other individuals who were “milling around” by a vehicle parked near two abandoned houses. *Tr.* at 44. Officer Baker was able to identify Carney, as he was familiar with Carney from previous encounters between the two. Carney and one of the individuals entered the narrow space between the two abandoned houses and stood “unnaturally close to each other.” *Id.* at 45. Officer Baker then began to ride his bike toward the individuals to get a better view of their activities, and Carney looked up and made eye contact with the officer. Carney bent down and dropped something. After looking back up at Officer Baker, Carney picked the object up again and threw it against one of the houses. Carney began to walk in the opposite direction of Officer Baker and then began to run. Officer Baker yelled, “Stop, Police” and eventually

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<sup>1</sup> See IC 35-48-4-6.

<sup>2</sup> See IC 35-44-3-3.

apprehended Carney.

After handcuffing Carney, Officer Baker walked back to the areas between the abandoned houses and recovered a plastic bag containing a substance, which was later tested and identified as 4.448 grams of crack cocaine. Officer Baker later took measurements and determined that the area between the two abandoned homes was 5.1 feet and that this area was 560.4 feet from a Catholic church and school.

The State charged Carney with possession of cocaine as a Class A felony and resisting law enforcement as a Class A misdemeanor. A jury trial was held on January 9, 2008, and the jury found Carney guilty of both offenses. The trial court sentenced him to thirty years on the Class A felony and one year on the Class A misdemeanor with the two sentences to be served concurrently. Carney now appeals.

### **DISCUSSION AND DECISION**

Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Williams v. State*, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id.*; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a reasonable doubt. *Williams*, 873 N.E.2d at 147; *Robinson*, 835 N.E.2d at 523.

Carney argues that insufficient evidence was presented to support his conviction for possession of cocaine. He specifically contends that the evidence presented at trial was not sufficient to support his conviction because this was a case of constructive possession, and as

such, the State had to prove that Carney had the intent and the capability to maintain dominion and control over the cocaine, which the evidence did not establish. We disagree.

In order to convict Carney of possession of cocaine as a Class A felony, the State had to prove that he knowingly or intentionally possessed cocaine in an amount greater than three grams within 1,000 feet of a school. IC 35-48-4-6(a), (b)(3)(B)(i). The possession of contraband may be either actual or constructive. *See Gee v. State*, 810 N.E.2d 338, 340 (Ind. 2004). “Actual possession occurs when a person has direct physical control over the item.” *Hayes v. State*, 876 N.E.2d 373, 375 (Ind. Ct. App. 2007), *trans. denied* (2008).

Although Carney argues that this is a case of constructive possession, we believe that the evidence supported that he had actual possession of the cocaine. At trial, Officer Baker testified that he observed Carney and another individual walk into the narrow area between two abandoned houses and stand “unnaturally close to each other” as people often do when conducting drug deals. *Tr.* at 45. When Carney saw Officer Baker approaching his location, he threw an object against one of the houses and ran. After apprehending Carney, Officer Baker recovered a plastic bag containing a substance, which was later identified as 4.448 grams of crack cocaine. The bag was retrieved approximately two and a half feet from where Officer Baker saw Carney throw the object. The bag was the approximate size of the object that Officer Baker observed Carney throw, and nothing else was discovered on the ground near the area where the bag was recovered. Further, the area where the plastic bag was found was within 1,000 feet of a school. We conclude that sufficient evidence was presented to show that Carney was in direct physical possession of the plastic bag containing crack cocaine and to support his conviction for possession of cocaine as a Class A felony.

Carney's contentions are merely a request to reweigh the evidence, which we will not do on appeal. *Williams*, 873 N.E.2d at 147.

Affirmed.

VAIDIK, J., and CRONE, J., concur.